

MEMO ENDORSED

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January 13, 2020

VIA ECF

The Honorable Valerie E. Caproni
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *Conti v. Doe*, Case No. 17-CV-9268 (VEC) (RWL)

Dear Judge Caproni:

We represent Plaintiff/Counterclaim-Defendant Dr. Paul M. Conti in the above-referenced proceeding. At the request of all counsel, I write to inform the Court that counsel for Defendant/Counterclaim-Plaintiff John Doe, counsel for James and Jane Doe (the "Doe Parents"), and I plan to hold the Doe Parents' depositions on February 11 and 12, 2020.

The deadline to complete the Doe Parents' depositions is currently stayed. (*See* Dkt. No. 116). However, I thought it prudent to inform the Court about counsel's agreement in advance of the conference scheduled for January 24, 2020, because Your Honor had directed in a December 6, 2019 Memo Endorsement that a separate deposition which John Doe's counsel had sought to reopen would have to be completed by January 22, 2020, which is the deadline for expert discovery in this case. (*See* Dkt. No. 179).

The reasons counsel plan to hold the Doe Parents' depositions on February 11 and 12, 2020 are as follows:

- a. The Doe Parents were scheduled to be deposed in early December 2019;
- b. Those depositions did not go forward because, in late November, I was diagnosed with a lung tumor which needed to be removed by surgery. Counsel for John Doe and the Doe Parents graciously agreed to postpone the depositions;
- c. At the time of my surgery, it was unclear when I would be able to return to work full-time;

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- d. On January 2, 2020, I informed all counsel that the lung tumor was benign, and that I expected to be back to work the week of January 6, 2020. At that time, I asked for available dates for the depositions. I repeated that request a number of other times thereafter;
- e. While I offered to conduct the depositions on numerous days, including weekends, so that they would be completed by the January 22, 2020 discovery deadline, counsel for John Doe and the Doe Parents had scheduling conflicts. This problem was understandable as it would have been unfair to expect them to set aside dates before January 22nd when they did not know when I would be returning to work;
- f. In addition, the Doe Parents were apparently traveling until recently and were not able to confirm available dates until this weekend or today; and
- g. This morning, counsel for the Doe Parents informed me that he and his clients are available for the depositions on February 11 and 12, 2020 in Florida. Both counsel for John Doe and I are also available on those dates and willing to travel to Florida.

Except for tomorrow (insufficient time to prepare), this Wednesday (medical reason), and next Tuesday (deposition of Defendant's expert), I am willing to conduct the Doe Parents' depositions in New York on any two days, including weekends, before the January 22, 2020. However, I do not believe that counsel for John Doe and the Doe Parents, as well as the Doe Parents themselves, should pay the price of tremendous inconvenience because they showed me such courtesy when I was ill.

Accordingly, I request that Your Honor permit the Doe Parents to appear for their depositions in Florida on February 11 and 12, 2020. However, if Your Honor will require that the Doe Parents' depositions be held before January 22, 2020, I request that you enter an Order directing the Doe Parents to appear for their depositions in New York on any of two of the following dates: January 16-20, 2020 and January 22, 2020.

While the Doe Parents' depositions were adjourned previously due to a privilege dispute, there has been no prior request to extend the deadline for their depositions.

Respectfully yours,

Judd Burstein

Application GRANTED. The depositions may take place in Florida on February 11, 2020 and February 12, 2020.

SO ORDERED.

cc: All Counsel (via ECF)

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE

1/14/2020